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Mark Friedrichs, Esq.
PI-40
Office of Policy and International Affairs
U.S. Department of Energy
Room 1E190
1000 Independence Ave. SW
Washington, D.C. 20585

Re: Supplemental Comments of Xcel Energy on 10 C.F.R. Part 300 Revised General Guidelines For Voluntary Greenhouse Gas Reporting; Interim Final Rule, 70 Fed. Reg. 15169-15192 (March 24, 2005)

Dear Mr. Friedrichs:

On April 22, 2005, Xcel Energy Inc. submitted its initial comments on the Revised General Guidelines for Voluntary Greenhouse Gas Reporting ("Guidelines"). Our April 22 comments focused on what we believe were significant flaws in the Guidelines: In our view, the Guidelines discouraged registration and reporting of greenhouse gas emissions avoided as a result of utility power purchase agreements and demand side management ("DSM") programs.

Since submission of our April 22 comments, we have been working with the Department of Energy ("DOE"), the Edison Electric Institute ("EEI")and other stakeholders to address our concerns. As a result, Xcel Energy now submits these Supplemental Comments discussing the same issues. We appreciate DOE's efforts to work with us and other stakeholders to improve the Guidelines. We are especially grateful that DOE recognizes the need to address avoided emissions resulting from power purchase agreements and DSM programs. We are pleased that DOE is actively exploring mechanisms that will allow a utility to report and register greenhouse gas reductions resulting from purchases of power from zero- and low-emitting generation technologies and DSM programs. This would provide a more comprehensive and accurate representation of a utility's energy supply portfolio.

Nevertheless, Xcel Energy remains concerned that the Guidelines do not yet provide utilities assurance that they can register and report avoided emissions from power purchase agreements and customer demand reductions. As set forth below, we support changes to the Guidelines that would assure that the utilities could register avoided emissions from purchased power and DSM programs.

1. Utilities should be allowed to directly register avoided emissions from purchased power, especially in cases where the purchased power is the result of a state competitive resource acquisition requirement.

DOE's practice of assigning 1605(b) reporting rights to the generator is based on the principle of ownership of the asset. The purpose of DOE's adherence to this principle is to ensure consistency in reporting. However, as indicated in our April 22 comments, DOE's inflexible application of this principle will create different impacts in regulated and unregulated power generation markets. Specifically, it discourages reporting by utilities in regulated generation markets that rely on purchased power from zero- or lower-emitting sources to achieve GHG reductions. These utilities must report the impact of purchased power as aggregators.[1] The additional burdens associated with aggregation would increase registration costs and result in inconsistencies in the level of reductions ultimately reported to DOE.

These burdens occur because many regulated utilities are subject to state statutory or regulatory requirements that mandate competitive resource acquisition. Generally, these requirements are designed to lead utilities to meet customer needs using purchased power. They discourage regulated utilities from owning much, if any, of the zero- or low-emitting generation on their systems. Under the Guidelines, regulated utilities would: (1) have at most a limited option to self-generate and take ownership of the avoided emissions; (2) be required to obtain substantial information from the independent power producer (IPP) beyond the scope of the relevant project; and (3) be forced to use CO_2 avoided emission calculation methods that may be different depending on whether the regulated utility owns or purchases the project.

[1] The Guidelines do not provide an opportunity for a utility to rebut DOE's presumption created under § 300.8(d) by allowing the reporting utility to demonstrate that it has a contract or other arrangement with the generator that provides that the utility is responsible for such reductions.

These problems could be avoided by changing the guidelines to allow utilities such as Xcel Energy to report directly the avoided emissions from purchased power, in cases where the purchased power is the result of a state competitive bidding requirement. Xcel Energy is not alone in this concern. The vast majority of utilities that supply renewable energy to their customers do so through the use of power purchase agreements. With the change we have proposed in these Supplemental Comments, these regulated utilities would not be subject to inconsistent treatment for their purchased and owned power. They could calculate the avoided emissions resulting from the purchased power using their own base values, rather than having to use calculated reductions from base values of IPPs.[2]

This approach is also consistent with the Energy Policy Act section 1605(b)(1))(C)(iii), which states that the Guidelines "shall establish procedures for the accurate voluntary reporting of information on . . . reductions in greenhouse gas emissions achieved as a result of . . . State or Federal requirements." The specific inclusion of this language indicates that Congress intended for DOE to include procedures for utilities to report the avoided emissions associated with purchased power in cases where purchased power results from state statutory or regulatory bidding or portfolio requirements.

DOE's concerns regarding potential double-counting could be addressed through a self-certification requirement by the IPP. Under this approach, the IPP could certify in its own 1605(b) report that any reductions are unrelated to a purchased power agreement with another utility resulting from a state requirement for competitive solicitation or renewable mandate. Under section 300.7(d) of the Guidelines, the IPP is already required to submit a certification as part of an offset agreement, so this modification would not result in a net increase in the burden on third-party IPPs.

In addition to the presumption of purchaser reporting rights where state mandates encourage competitive power purchases, DOE should also provide a simple procedure for purchaser registration where the rights to emission attributes are contractually assigned to the purchaser. In many cases, even in states without specific statutory or regulatory mandates, utilities may choose to purchase power rather than self-generate for economic, financial, or other operational reasons. As currently written, the Guidelines impose far too great a burden, with extensive documentary filings required by both the

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[2] The Guidelines define Base Value as "the value from which emission reductions are calculated for an entity or subentity. The value may be annual emissions, emissions intensity, kilowatt-hours generated, or other value specified in the 1605(b) guidelines. It is usually derived from actual emissions and/or activity data derived from the Base Period." See §300.2. Base Period means a period of 1-4 years used to derive the average annual base emissions, emissions intensity or other values from which emission reductions are calculated. Id.

purchaser and generator. These burdens would make it impractical for purchasers to register contractually-owned avoided emissions, especially where contracts already exist. Instead, DOE should allow a simple certification by the purchaser/registrant that the rights to avoided emissions being registered are owned by the purchaser under contractual agreement with the generator.

2. <u>Avoided emissions associated with DSM should generally belong to and be registered by the utility administering the DSM program</u>.

Xcel Energy has a strong interest in working with DOE to develop a DSM calculation methodology that would permit the reporting of avoided emissions and intensity from the DSM programs it sponsors. We recognize the potential for duplication of reported reductions, particularly for DSM programs at large commercial or industrial facilities, but believe these issues can be credibly overcome with state DSM program oversight and reporting transparency.

In concept, emissions avoided as a result of DSM actions are comparable to avoided emissions resulting from additional generation from zero-or lower-emitting sources. Utilities are currently required to provide data to EIA annually on DSM activities. The current EIA Form-861 reports data on both peak MW capacity reductions and annual MWh savings. Form-861 also includes data on both incremental and total annual electricity savings, as well as annual expenditures dedicated to DSM programs. This report provides an independent check for evaluating utility 1605(b) reports on DSM activities.

Xcel Energy generally agrees with EEI's DSM methodology as proposed in its June 22, 2005 comments. However, we think it will be unnecessary to establish a size cap on DSM customers in order to eliminate the potential for any duplication of DSM program data. DOE should establish a presumption that all avoided emissions associated with DSM programs belong to and can be registered by the utility. Where a commercial/industrial customer and a utility agree that the customer should own the right to register the reductions, DOE should allow a one-time transfer of registration ownership in the registration year when the avoided emissions occurred. Without such transfer, registration ownership would continue to reside with the utility for the life of the project. We appreciate the opportunity to continue to work with DOE on this issue as it evaluates acceptable calculation methodologies and procedures.

With regard to registering reductions in emission intensity, in some cases the implementation of customer energy efficiency programs can have the unintended effect of causing a utility's average emission intensity to increase rather than decrease. This is because actions to reduce customer electric demand usually occur at times of peak system electric demand and, in many regions, peak demand is served by generating units burning natural gas that have lower CO_2 emission rates than units burning coal. DSM actions that eliminate this gas-fired electricity from the mix will result in a higher proportion of coal-fired electricity and, consequently, a higher CO_2 intensity. To alleviate this penalizing effect, we recommend that in such cases DOE allow an optional "DSM Adjustment" to the intensity calculation whereby the "avoided electricity" (avoided kilowatt-hours) due to a utility's DSM program is included in the denominator of the calculation of CO_2 intensity (pound of CO_2/kilowatt-hour). This would offset the penalty effect of DSM that would otherwise prevent the utility from registering a reduction in CO_2 intensity for the year.

3. One-time transfers of registration ownership should be allowed in the reporting year in which the emission, emission reduction, avoided emission or offset was created.

Under the Guidelines, registration rights cannot be "transferred" between parties participating in 1605(b) and not participating in 1605(b). The prohibition on transferability of registered reductions between 1605(b) participating parties does not provide the electric utility industry appropriate incentives, nor is it compatible with current business practices. Since submission of our April 22 comments, we have become aware of DOE's concerns about the potential risk of 1605(b) evolving into a "trading registry" if such transfers were allowed. We believe that this concern is unfounded. By allowing one-time transfers of registration ownership in the reporting year in which the emission, emission reduction, avoided emission or offset was created, DOE is not creating a market-based emissions trading mechanism and would not become a trading registry. We encourage DOE to authorize such transfers.[3]

[3] In addition to the other issues Xcel Energy specifically endorses comments on the guidelines proposals being filed by PowerTree Carbon Company and UtilitTree Carbon Company on forestry and agricultural sequestration and by the Coal Combustion Products Partnership on coal ash re-use.

Xcel Energy appreciates the opportunity to submit these comments and looks forward to further discussion and work with DOE.

Very Truly Yours,

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Xcel Energy Inc.